

Consumer Finance Litigation



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CFPB Issues Debt Collection Interim Final Rule Due to the Ongoing COVID-19 Pandemic

The CFPB's interim final rule amends Regulation F to, among other things, (i) require debt collectors to provide written notice to certain consumers about the CDC's temporary eviction protections; and (ii) prohibit debt collectors from misrepresenting that a consumer is ineligible for eviction protection under the CDC's moratorium. Debt collectors should take the necessary steps to ensure compliance with the amendment.

On April 19, 2021, the Consumer Financial Protection Bureau ("CFPB") issued an interim final rule to amend Regulation F at 12 C.F.R. § 1006 (the "IFR") to require debt collectors to provide consumers with disclosures relating to the Centers for Disease Control and Prevention ("CDC") order, titled "Temporary Halt in Residential Evictions to Prevent the Further Spread of COVID-19" (86 FR 16731 (Mar. 31, 2021)) (the "CDC Order").¹ The CDC Order "generally prohibits a landlord, owner of a residential property, or other person with a legal right to pursue eviction or possessory action from evicting for non-payment of rent any person protected by the CDC Order from any residential property in any jurisdiction in which the CDC Order applies." This prohibition applies to any agent or attorney acting on behalf of a landlord or owner of a residential property. Notably, however, the CDC Order does **not** cover foreclosure on a home mortgage.

The CFPB issued the IFR due to its concerns that consumers are unaware of their protections under the CDC Order and that debt collectors may be engaging in eviction-related conduct that violates the Fair Debt Collection Practices Act,

15 U.S.C. § 1692, *et seq.* (the "FDCPA"). The IFR applies to "debt collectors," "consumers," and "debt," as defined in the FDCPA.

Specifically, the IFR provides that, during the effective period of the CDC Order, in any jurisdiction where the CDC Order applies, and in connection with collection of a debt, a debt collector must not falsely represent or imply to a consumer that the consumer is ineligible for temporary protection from eviction under the CDC Order. In addition, the IFR provides that before filing an eviction action against a consumer for non-payment of rent, a debt collector must disclose that the consumer may be eligible for temporary protection from eviction under the CDC Order if the CDC Order might reasonably apply to that consumer. The disclosure must be (i) in writing and clear and conspicuous and (ii) provided on the same date as the debt collector provides the consumer with the eviction notice or, if no eviction notice is required, on the date that the eviction action is filed.² Although the IFR states that "clear and conspicuous" means "readily understandable" and that the "location and type size also must be readily noticeable and legible to consumers," the

IFR does not mandate a specific font or minimum type size. Thus, it may be prudent for debt collectors to provide the disclosure in bold-faced letters and a larger font than the other language in the eviction notice and place the disclosure prominently on the first page of such notice.

Finally, it would be prudent to use one of the following two sample disclosures contained in the IFR:

“Because of the global COVID-19 pandemic, you may be eligible for temporary protection from eviction under Federal law. Learn the steps you should take now: visit www.cfpb.gov/eviction or call a housing counselor at 800-569-4287.”

and

“Because of the global COVID-19 pandemic, you may be eligible for temporary protection from eviction under the laws of your State, territory, locality, or tribal area, or under

Federal law. Learn the steps you should take now: visit www.cfpb.gov/eviction or call a housing counselor at 800-569-4287.”

The IFR becomes effective on May 3, 2021.

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1. The CDC Order will remain in effect until June 30, 2021, unless extended, modified, or rescinded. Please see the full IFR at <https://www.consumerfinance.gov/rules-policy/final-rules/debt-collection-practices-global-covid-19-pandemic-regulation-f/>.
 2. This condition is satisfied if the debt collector provides the disclosure in the same mailing as the eviction notice; a separate mailing is not required. Further, the disclosure may be provided to consumers even if they may not be covered by the CDC Order and the disclosure may be provided more than once to the consumer, such as in each subsequent communication.